

REMARKS

Claims 14, 17 through 19, 21 through 24, 27, 28, 31, 34 through 37 and 39 through 41 remain pending in the present application. Claims 1-13 directed to the non-elected invention have been canceled.

Rejection for Double Patenting

Claims 14, 17 through 19, 21 through 24, 27, 28, 31, 34 through 37 and 39 through 41 stand rejected under the judicial doctrine of nonstatutory obviousness-type double patenting over U.S. Serial No. 12/021,546. The Examiner is of the view that:

Claims 14, 17-19, 21-24, 27, 28, 31, 34-37, 39-41 are ... unpatentable over claims 14-19, 21-24, 27-31, 34 of copending Application No. 12/021,546 (US'546). Although the conflicting claims are not identical, they are not patentably distinct from each other because US'546 claims a composition and drug delivery vehicle for inhibiting adhesions (claim 1) using delivery vehicles (claims 3 and 15) of Pemirolast (claim 2). Therapeutic agents are set out in claim 6, Dosage of Pemirolast is found in claim 11. The vehicle may comprise a polymer selected from the group set out in claim 16. Carrier characteristics are set out in claims 17-19. As such, those of ordinary skill would expect similar therapeutic effects on adhesions given the claims of US'546. The instant claims would have been obvious to one of ordinary skill at the time of invention given the claims of US'546).

Applicants traverse this basis for rejection and respectfully request reconsideration and withdrawal thereof.

The Examiner's attention is directed to the fact that U.S. Serial No. 12/021,546 is a divisional application of the present application. As such, a double patenting rejection is improper according to 35 U.S.C. §121.

35 U.S.C. 121 Divisional applications.

If two or more independent and distinct inventions are claimed in one application, the Director may require the application to be restricted to one of the inventions. If the other invention is made the subject of a divisional application which complies with the requirements of section 120 of this title it shall be entitled to the benefit of the filing date of the original application. A patent issuing on an application with respect to which a requirement for restriction under this section has been made, or on an application filed as a result of such a requirement, ***shall not be used as a reference*** either in the Patent and Trademark Office or in the courts against a divisional application or against the original application or any patent issued on either of them, if the divisional application is filed before the issuance of the patent on the other application. (Emphasis added; accord **MPEP 804.01**).

In view thereof, it is respectfully requested that the grounds for rejection of claims 14, 17 through 19, 21 through 24, 27, 28, 31, 34 through 37 and 39 through 41 under the judicial doctrine of nonstatutory obviousness-type double patenting over U.S. Serial No. 12/021,546, be removed.

The Commissioner is hereby authorized to charge any additional fees which may be required, or credit any overpayment to Account No. 50-2478(14758).

In view of the foregoing, it is respectfully submitted that the present claims are in condition for allowance. Prompt notification of allowance is respectfully solicited.

Application No.: 10/780,452
Amendment Dated: March 5, 2009
Office Action Mailed: December 12, 2008

If the Examiner has any questions or wishes to discuss this application, the Examiner is invited to contact the undersigned representative at the number set forth below.

Respectfully submitted,

Date: March 5, 2009

A handwritten signature in black ink, appearing to read "Michael J. Mlotkowski", is written over a horizontal line.

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